IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

FRIDAY, THE 7TH SEPTEMBER 2007 / 16TH BHADRA 1929

CRL.A.No. 1117 of 2006()

SC.115/2003 of ADDL. SESSIONS COURT (ADHOC), KALPETTA

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APPELLANT/ACCUSED:

FIROZE KHAN, S/O.AKBAR KHAN,
AGED 26 YEARS, RESIDING AT HOUSE NO.1304,
VANITHA JUNCTION, MANANTHAVADY VILLAGE,
MANANTHAVADY TALUK, WAYANAD DISTRICT.

BY ADVS. SRI.M.RATNASINGH (SR.)
SRI.N.J.ANTONY

RESPONDENTS: STATE

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1. SUB INSPECTOR OF POLICE,
MANANTHAVADY, WAYANAD DISTRICT.

2. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. THOMAS JOHN AMBOOKKAN

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 07/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER IN CRL.M.A.NOI.5620 OF 2006 IN CRL. APPEAL NO. 1117 OF 2006.

DISMISSED

7.9.2007 Sd/-(K.THANKAPPAN, JUDGE)

K.THANKAPPAN, J.

CRL. APPEAL NO. 1117 OF 2006

Dated this the 7th day of September, 2007

JUDGMENT

This appeal is filed against the judgment in S.C. No.115 of 2003 on the file of the Additional Sessions Court (Ad hoc)-I, Kalpetta. The appellant faced trial for the offences punishable under Sections 307, 326 and 324 I.P.C.

2. The prosecution case against the appellant - accused was that while the accused was sitting in the classroom on 26.7.2001 at 11.15 a.m., PWs.1, 13 and some other students came into the classroom and while PW.1 was talking to PW.2, the accused hit PW.1 on his head and back with a wooden leg of a desk due to previous enmity as a result of which he sustained grievous injuries. It is the further case of the prosecution that PW.2 also sustained injury in the incident. To prove the case against the appellant, the prosecution examined PWs.1 to 15 and produced Exts.P1 to P8 as well as MO.1. On the side of the defence

DWs.1 to 4 were examined and Exts.D1 and D2 were produced. After closing the prosecution evidence, the accused was questioned under Section 313 Cr.P.C. He denied the allegations levelled against him and stated that on the day of the incident there was a clash between the student of the S.F.I. group and the K.S.U. group and that while he was sitting in his classroom PW.1 and some other students entered the classroom with weapons and attacked him. However, relying on the prosecution evidence, the trial court found the accused guilty under Sections 307 and 326 I.P.C., convicted him thereunder and sentenced him to undergo rigorous imprisonment for five years and to pay a fine of Rs.20,000/- and in default of payment of fine, to undergo rigorous imprisonment for a further period of two years under Section 307 I.P.C. He was further sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs.10,000/- and in default of payment of fine, to undergo rigorous imprisonment for a further period of one year under Section 326 I.P.C. Both the substantive sentences were ordered to run concurrently. The accused was also given the benefit under Section 428 Cr.P.C.

3. This Court heard Sri. M. Ratna Singh, learned senior counsel appearing for the appellant as well as the learned Public Prosecutor.

4. The learned senior counsel appearing for the appellant challenges the judgment of the trial court mainly on the following grounds: (i) the findings entered by the trial court are not based on evidence as the trial court had not considered the entire evidence in its true perspective, (ii) the trial court ought to have found that the prosecution had not placed the entire facts and circumstances of the case before the court as it is seen that the prosecution had not proved the origin or the motive for the alleged attack, (iii) there appears to be two versions of the incident and hence, the finding of the trial court is perverse and (iv) the trial court committed serious error in finding the appellant guilty under Section 307 I.P.C. as the prosecution had not proved that the appellant had the intention to commit the act.

5. The injured in the incident were examined as PWs.1 and 2. PW.1 was a third year B.com. student of Government College, Mananthavady during the relevant period. He deposed that on 26.7.2001 at about 11.15 a.m. he went to the final year B.Sc. (Electronics) class to meet his friend, one Thomas and that while he was sitting on the back bench near PW.2, the accused who was also sitting in the classroom came near him and hit him on his head with some heavy object. He further stated that when he looked back, the accused hit him on his back. PW.1

further stated that he fainted and that when he regained consciousness, he was at the Medical College Hospital, Kozhikode and was discharged from the hospital on 14.8.2001. This witness also stated that he was the Fine Arts Secretary of the College and that the accused who was the defeated candidate was inimical towards him and had hit him with the intention to murder him. PW.2 was a final year B.Sc. (Electronics) student. She stated before the trial court that on the date of the incident while she was sitting in her classromm drawing graph, PW.1 came to the classroom and sat near her and that immediately she got a blow on the left side of her head. She further stated that when she stood up she found the other students around PW.1 and that on enquiry she was informed that the accused had hit PW.1 on his head with the wooden leg of the desk. This witness further stated that she was taken to Government Hospital, Mananthavady where she was admitted. PW.3, a class mate of the accused also stated that she had seen the accused hitting PW.1 on his head with the wooden leg of a desk. She further stated the accused also hit PW.1 on his back whereupon PW.11 and another student came forward, snatched the wooden leg from the accused and threw it out. PW.4, another student, stated that he heard a sound and saw PW.1 falling on his back and found the accused hitting PW.1 on his back. PW.13 who was also a classmate of the accused had given Ext.P6 First Information Statement on

the basis of which Ext.P6(a) First Information Report was registered by PW.14. As per Ext.P6 statement, on the date of the incident, PW.1 came into the classroom of the accused and while he was talking to PW.2, the accused came from behind and hit PW.1 on his head with the wooden leg of a desk uttering that PW.1 won't be spared. He further stated that the accused inflicted another blow on the back of PW.1 with the same weapon. This witness further stated that PW.2 who was sitting near PW.1 also got injured and that both PWs.1 and 2 were taken to the Government Hospital, Mananthavady from where PW.1 was taken to the Medical College Hospital, Kozhikode. PW.11 who was a final year B.A. (English) student and a member of S.F.I. stated that he heard about the incident while he was attending lecture in his class and that when he went to the place of incident, he saw PW.1 lying unconscious and PW.2 sitting with an injury on her head. This witness further stated that he had borrowed a pair of boots from the accused for playing football and that after the match he could not return the boots as the same were missing. PW.11 further stated that though he agreed to buy a new pair of boots, the accused had insisted on getting the old ones and that though the matter was finally settled by the Principal of the college , the accused used to insult the whole S.F.I. organization stating this incident. PWs.5, 9 and 10 were respectively the Malayalam Lecturer, Senor Grade Lecturer of Department of English and

the Principal of Government College, Mananthavady. PW.6 was the peon of the college. PWs.8 and 12 were the two doctors who examined the injured. PW.7 was the Village Officer who issued Ext.P2 scene plan after verifying the place of occurrence. PW.14 was the Additional Sub Inspector of Police, Mananthavady Police Station who recorded Ext.P6 First Information Statement and registered Ext.P6(a) First Information Report. PW.15 was the Circle Inspector of Police, Mananthavady during the relevant time. He stated that he went to the place of occurrence and prepared Ext.P1 scene mahazar in the presence of witnesses. He further stated that he recovered MO.1 wooden leg of the desk, questioned the witnesses and arrested the accused on 6.8.2001 from the Government Hospital, Mananthavady. DWs. 1 and 2 were the classmates of the accused, DW.3 was the Head Constable who recorded the statement of the accused on 30.7.2001 while he was undergoing treatment regarding the same incident and DW.4 was the Sub Inspector of Police, Mananthavady Police Station who had registered a case on 2.8.2001 on the basis of Ext.D1 First Information Statement recorded by DW.3.

6. The trial court mainly considered the evidence of PWs.1 to 4, 11 and 13 as eye witnesses to the occurrence and found that the prosecution succeeded in proving that the appellant – accused inflicted injuries on

PWs.1 and 2 as alleged by the prosecution. The evidence of PWs.8 and 12 was also accepted by the trial court to find that the appellant committed offence punishable under Sections 307and 326 I.P.C. The trial court also relied on the evidence of PWs.14 and 15, the investigating officers, and held that MO.1 wooden leg of the desk recovered from the porch of the building was used by the appellant at the time of the incident to inflict injuries on PWs.1 and 2.

7. The question to be considered in this appeal is whether the evidence of PWs.1 to 4, 11 and 13 can be accepted in the light of the contentions raised by the learned senior counsel appearing for the appellant.

8. This Court also considered the case set up by the appellant, the suggestions put to the witnesses as well as the evidence of DWs.1 to 4. The evidence of PWs. 1 and 2 would show that on the day of the incident while they were sitting in their classroom, PW.1 came into the classroom and sat near PW.2 and the appellant came behind PW.1 and uttering that PW.1 shall not be spared, inflicted a blow on the head of PW.1 with MO.1 wooden leg of the desk. PW.2 also got injured . It is the further case of PW.1 that when he looked back, the appellant inflicted one more blow on

his back. The evidence of PWs.2, 3 and 4 supports the evidence of PW.1. PW.11, though had given evidence in support of the evidence of PWs.1 and 2, had stated that he had not seen what had actually happened. Before considering the evidence of these witnesses, it has to be analysed as to what prompted PW.1 to come to the classroom of the appellant as he was not a student of that class. In this context, the prosecution case is that PW.1 being the Fine Arts Secretary of the college came to the classroom to talk to PW.2 and also to PW.4 regarding a book pertaining to Electronics which he wanted to take from the library. When PWs.1 and 4 were cross-examined on this aspect, they had not stated anything in connection with the book. PW.2 also did not say anything about the book. She stated that she was engaged in drawing graph and did not hear the conversation between PWs.1 and 4. She also stated that she was not aware of the presence of PW.4 at the time of the incident. When cross-examined, this witness stated that പൂറകിൽ സംഭവിച്ചത് ഞാൻ കണ്ടില്ല . Electronics–ഉം B.Com. വിഷയവുമായി യാതൊര ു ബന്ധവ ുമില്ല. PW.3 who was also in the classroom during the relevant time had no explanation to offer regarding the presence of PW.1 in their classroom. The explanation offered by the prosecution in this regard is not satisfactory. That means, the prosecution has not proved the motive behind the attack. Motive may not be relevant in a case where the eye witnesses have given evidence in support of the prosecution case.

But in the case in hand, the prosecution has not proved actually when and how the prosecution case originated. The case set up by the appellant was that he was attacked by PW.1 and others. Though the case registered by DW.4 on the basis of the First Information Statement given by the appellant was referred, that cannot be taken as a ground to disbelieve the appellant as there are other infirmities in the evidence adduced by the prosecution. In this context, the evidence of PW.13 assumes relevance. Though this witness stated that he had given Ext.P6 First Information Statement to PW.14, he disowns his statement in Ext.P6 and stated that he had not narrated the incident to the police, but had only signed Ext.P6. PW.14 had admitted before the court that on the day of the incident itself, the police had received information regarding the clash between the student of the S.F.I. and K.S.U. groups. He stated in cross-examination that 27/701–ാ തീയതിതന്നെ കോളേജിൽ നടന്ന സംഭവം അറിഞ്ഞിരുന്നു.S.F.I., K.S.U. സംഘട്ടനം ഉണ്ടായവിവരം സ്റ്റേഷനിൽ അറിഞ്ഞിരൂന്ന ു. അന്ന് പോലീസ് കോളേജിൽ പോയിരുന്നോ എന്ന് ഓർമയില്ല. It is seen that no clarification is made by the prosecution regarding this statement.

9. Further, it is to be noted that as per Ext.D1, PW.8 had already given an intimation to the police regarding the admission of the appellant at the Government Hospital, Mananthavady. Neither PW.14 nor PW.15

had given any evidence regarding the intimation received from the Government Hospital,Mananthavady or the Medical College Hospital, Kozhikode regarding the admission of PWs.1 and 2. PW.5 also had given evidence to the effect that he had seen the appellant at the Government Hospital, Mananthavady when he had accompanied PWs.1 and 2 to the hospital. This witness had stated that " പ്രതിയെ ചികിൽസ നടത്തുന്നതായി കണ്ടില്ല . ചികിൽസ നടത്താൻ വന്നതായിര ുന്നോ എന്നറിയി ല്ല. Casualty യിലായിരുന്നു കണ്ടത് . അതിനെ ക ുറിച്ച് പ്രതിയോട് ചോദിച്ചി ല്ല. ചികിൽസിക്കാൻ വേണ്ടിയായിരുന്നു പ്രതിവന്നതെന്ന ു പറഞ്ഞാൽ ശരിയായിരിക്കാ ം. Apart from the evidence of this witness, it can be seen from the evidence of PW.15 that the appellant was arrested on 6.8.2001 from the Government Hospital, Mananthavady on the basis of the remand made by the Magistrate concerned. In this context, the learned trial Judge had not considered the evidence of DWs.1 to 4. DWs.1 and 2 were the classmates of the appellant. They had stated that on the day of the incident, there was a clash between the students belonging to S.F.I. and K.S.U. groups and that PW.1 and two other Engineering students entered the classroom of the appellant with sticks, reaper etc. and attacked the appellant. They also stated that they were questioned by the police in connection with the incident (Crime No.213 of 2001) and were also summoned to the court for the purpose of examination in that case. However, DWs.1 and 2 were not

examined and no reason is forthcoming for their non-examination. It is also seen from the evidence of DWs.3 and 4 that Ext.D1 First Information Statement was recorded and Ext.D2 First Information Report was sent to the court on the basis of the statement of the appellant. The fact that the case registered on the basis of the statement given by the appellant was referred also creates doubt regarding the real picture of the incident that happened in the college on 26.7.2001. In this regard, learned senior counsel appearing for the appellant submits that the original first information statement received by the police has been suppressed and that creates veracity in the evidence given by PWs.1 to 4, 11 and 13. In the light of these facts, the finding of the trial court that PWs.1 to 4, 11 and 13 have given the true version of what had happened on the date of the incident cannot be accepted.

10. Yet another point to be noted is that PWs.1 to 4, 9 and 10 have no case that there was a clash between the two groups of students on the date of the incident. If there was no clash or dispute between the students of the two groups, it was the duty of the prosecution to prove the motive for the appellant to attack PW.1. According to PWs.9 and 10, the animosity between the appellant and PW.1 was that PW.1 had won the election to the post of Fine Arts Secretary of the College and the appellant

was the defeated candidate. Another dispute between them was regarding a pair of boots which according to PW.10 had already been settled. In the light of the above facts, this Court is not in a position to hold that PWs.1 to 4, 11 and 13 have spoken the true facts or that the prosecution had placed the entire facts before the court. In the above circumstances, the finding of the trial court that the appellant committed offences punishable under Sections 307and 326 I.P.C. is not justifiable and is liable to be set aside.

11. The next question to be considered is regarding the evidence of PWs.8 and 12. PW.8 was the doctor attached to the Government Hospital, Mananthavady. He had stated that he had examined PW.1 on 26.7.2001 at about 11.30 a.m. and noted the following injuries on his body:

> "Swelling over the scalp near the centre.
>
> Patient was disoriented.
>
> No internal injury."

PW.8 also stated that PW.1 was conscious, but disoriented. He further stated that the patient was referred to the Medical College Hospital, Kozhikode as he suspected head injury. When cross-examined, this

witness stated that Ext.P3 യിൽ പറഞ്ഞിട്ടുള്ള പരിക്ക് ഒരു മൽപ്പിടുത്തത്തിൽ വീണാലും സംഭവിക്കാവുന്നതാണ്. നിലത്തോ, ചുമരിലോ തല അടിച്ചാലും ഉണ്ടാകും. Though PW.8 stated that " ഫിറോസ്ഖാൻ 3rd B.Sc., Electronics മരത്തടികൊണ്ട അടിച്ചതിനാല്" he had not stated as to who had given him the said information. This witness also stated that he had examined PW.2 and that the injury noted on her body was minor in nature. The evidence of PW.12, the Professor in Neuro Surgery at Medical College Hospital, Kozhikode, would show that he had examined PW.1 at about 6.30 p.m. on 26.7.2001. This witness had stated that Firoz Khan, a student from Mananthavady college who had been beaten with stick on his head was brought to him. He had also not stated the source of his information. This witness had stated that he noted linear fracture on the left perital bone of PW.1 and that the injuries sustained by PW.1 were grievous in nature. It is to be noted that when this witness was examined by the prosecution as well as by the defence, it was not elicited whether any intimation regarding the incident was sent to the Medical College Police Station or Mananthavady Police Station on 26.7.2001.

12. This Court has already found that the prosecution had not placed the entire facts before the trial court and that the evidence of PWs.1 to 4, 11 and 13 is not sufficient to prove the case against the appellant

beyond reasonable doubt. In the above circumstances, the benefit of doubt has to be given to the appellant. The conviction and sentences ordered against the appellant by the trial court are, therefore, set aside and the appellant is found not guilty of the charges levelled against him and is acquitted of the charges.

The Crl. Appeal is accordingly allowed. The bail bonds executed by the appellant shall stand cancelled.

(K.THANKAPPAN, JUDGE)

sp/

THANKAPPAN, J.

CRL.A. NO.

JUDGMENT

SEPTEMBER, 2007